TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~420~~ 139

LAWRENCE LANGDEAU, PLAINTIFF IN ERROR,

vs.

AMASA HANES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED APRIL 2, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 420.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable Thomas Drummond, judge of the seventh judicial circuit, presiding judge, and the honorable Samuel H. Treat, district judge of said southern district of Illinois, associate judge, on the twenty-fifth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh year.

J. A. JONES, *Clerk.*

LAWRENCE LANGDEAU } In ejectment.
v.
AMASA HANES.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Lawrence Langdeau, a citizen of the State of Missouri, plaintiff, puts in his place John Hallum, esq., and Messrs. Scholes and Mather, his attorneys, against Amasa Hanes, a citizen and resident of the said southern district of Illinois, defendant, who puts in his place
2 Messrs. Stuart, Edwards and Brown, and Azro Dyer, esq., his attorneys, in a plea of trespass and ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit: on the second day of August, in the year of our Lord one thousand eight hundred and seventy two, came said plaintiff by his attorneys, and filed in the office of the clerk of the circuit court of said district his declaration in ejectment against the said defendant, together with a bond for costs in said cause, which said bond for costs and declaration are in the words and figures following to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Circuit court, January term, A. D. 1873.

LAWRENCE LANGDEAU } Ejectment.
vs.
AMASA HANES.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs
3 which may accrue in this action either to the opposite party or to any of the officers of this court in pursuance of the laws of this State and of the United States.

Dated this second day of August, 1872.

JOHN HALLUM.

(Indorsed:) Filed August 2nd, A. D. 1872. J. A. Jones, clerk.

REC. 420—1

Declaration.

In the circuit court of the United States for the southern district of Illinois, to January term, A. D. 1873.

LAWRENCE LANGDEAU
vs.
AMASA HANES. } Ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Lawrence Langdeau, a citizen of the United States and of the State of Missouri, now residing in said State, the plaintiff in this suit, by attorney, complain' of Amasa Hanes, the defendant herein, who is a citizen of the United States and of the State of Illinois, now residing in said State, to wit, at the southern district aforesaid, of a plea where-
4 fore he, the said defendant, with force and arms, broke and entered the plaintiff's close and ejected him therefrom. For that heretofore, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and seventy-two, the said plaintiff was seized and possessed in fee of certain premises situated in Lawrence County, in the State of Illinois, to wit, in the southern district thereof as aforesaid, known, designated, and described as follows, to wit, all of that certain tract *tract* or parcel of land comprised in and known as United States survey or location number three, (3,) in township number three (3) north, of range No. ten (10) west of the second principal meridian, containing two hundred and four $\frac{17}{100}$ acres of land, more or less, as per plat and survey of the same now of record in the office of the custodian of United States plats and surveys at Springfield, Illinois, and in the General Land-Office, at Washington City, vol. 13, page 452, of Patent Records. Said land has a front on the west bank of the Wabash River of six (6) arpents opposite the town of Vincennes, Indiana, and
5 runs thence westwardly with the same width, between parallel lines, forty arpents in depth; and being so possessed, the said defendant afterwards, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and seventy-two, entered into the said premises and ejected the said plaintiff therefrom; and the said defendant still unlawfully withholds from the plaintiff the possession thereof. And the plaintiff avers that he claims title to the said land in fee; and that he is entitled to the possession thereof. Plaintiff avers that the said land and premises are worth ten thousand dollars. Wherefore said plaintiff says that he is injured and hath sustained damage in the sum of one thousand dollars; therefore he sues.

HALLUM & SMITH,
Attorneys for Plaintiff.

(Indorsed:) Filed August 2nd, 1872. J. A. Jones, cl'k.

And afterwards, to wit, on said second day of August, of the
6 year aforesaid, a summons was issued in said-entitled cause out of the office of the said circuit clerk, directed and delivered to the marshal of said district to execute, which said summons is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you that you summon Amasa Hanes, if to be found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the 1st Monday of January, A. D. 1873, to answer unto Lawrence Langdeau of a plea of trespass and ejectment, wherein the said plaintiff sues to recover of the said defendant a parcel of land situated in the county of Lawrence and State of Illinois, in the said southern district of Illinois, which is described as follows, to wit: all that
7 certain tract or parcel of land comprised in and known as United States survey or location number three, (3,) in township number three (3) north, of range No. ten (10) west of the second principal meridian, containing two hundred and four $\frac{17}{100}$ acres of land, more or less, as per plat and survey of the same, now of record in the office of the custodian of United States plats and surveys at Springfield, Illinois, and in the General Land-Office, at Washington City, vol. 13, page 452, of Patent Records. Said land has a front on the west bank of the Wabash River of six (6) arpents opposite the town of Vincennes, Indiana, and runs thence westwardly with the same width, between parallel lines, forty arpents in depth, (which said premises exceed in value the sum of five hundred dollars,) and in which action the said plaintiff claims title to said premises in fee-simple, as well as the sum of one thousand dollars for his damage, as he alleges, by reason of unlawfully withholding the possession of said premises since July 3rd, A. D. 1872, by the defendant; and have you then and there this writ, and make
8 return thereon in what manner you execute the same.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this second day of August, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

J. A. JONES, *Clerk.*

Which said summons was afterwards, to wit, on the twenty-seventh day of October, of the year aforesaid, returned by the marshal of said district, indorsed in the words and figures following, to wit:

I hereby appoint Dan'l L. Gold my special deputy to execute this writ. August, A. D. 1872.

EDWARD R. ROE,
United States Marshal for the Southern District of Illinois.

I have, on this 20th day of September, A. D. 1872, served the within summons by delivering a true copy of the same to the within-named Amasa Hanes, who is not in possession of the within-described premises.

EDWARD R. ROE,
9 *United States Marshal for the Southern District of Illinois.*
By DAN'L L. GOLD,
Deputy.

(Indorsed:) Filed October 27, A. D. 1872. J. A. Jones, clerk.

Then afterwards, to wit, on the twentieth day of November, of the year aforesaid, came the defendant, by Azro Dyer, esq., his attorney, and filed in the office of the clerk of the circuit court of said district his plea herein, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States in and for the southern district of Illinois. January term, 1872.

LAWRENCE LANGDEAU, PLAINTIFF, *vs.* AMASA HANES, DEFENDANT. } Ejectment.

And the said defendant, by his attorney, Azro Dyer, comes and defends the wrong and injury when, &c., and says that he is not
10 guilty of unlawfully withholding the said premises claimed by said plaintiff in manner and form as alleged in said declaration, and of this he puts himself upon the country, &c.

AZRO DYER,
Att'y for Defendant.

And the plaintiff doth the like.

JNO. HALLUM,
Att'y for Pl'ff.

(Indorsed:) Filed November 20th, A. D. 1872. J. A. Jones, cl'k.

Then afterwards, to wit, on the sixth day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-three, the following proceedings were had in said court in said cause, and entered of record, to wit:

Leave to file additional pleas.

LAWRENCE LANGDEAU *v.* AMASA HANES. } In ejectment.

On motion of defendant, by Messrs. Stuart, Edwards and Brown, his attorneys, leave is granted to file additional pleas herein.

11 Now, afterwards, to wit, on the twenty-second day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Trial by court.

LAWRENCE LANGDEAU *v.* AMASA HANES. } In ejectment.

This day comes as well the plaintiff, by John Hallum, esq., and D. T. Jewett, esq., his attorneys, as the defendant, by Messrs. Stuart, Edwards

and Brown, his attorneys, and the issue, joined by consent, is tried by the court. A jury being waived, and the court having heard the evidence, the further trial of this cause is postponed to to-morrow morning for argument of counsel.

Afterwards, to wit, on the twenty-third day of January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

12 *Trial by court.*

LAWRENCE LANGDEAU
v. } In ejectment.
AMASA HANES.

This day come again the parties by their attorneys, and the court, having heard argument of counsel, takes the same under advisement.

And, afterwards, to wit, on the twenty-third day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Judgment.

LAWRENCE LANGDEAU
v. } In ejectment.
AMASA HANES.

This day come again the parties by their attorneys, and the court, being sufficiently advised in the premises, finds the issue for the defendant: that he is not guilty of unlawfully withholding from the plaintiff the possession of the real estate and premises in the plaintiff's declaration described, or of the trespasses in ejectment therein mentioned.

It is therefore ordered and adjudged by the court that the
13 plaintiff take nothing for his writ; that the defendant go hence without day, and recover of the said plaintiff the sum of thirty-eight dollars and five cents, his costs and charges by him about his defence in this behalf expended, and that execution issue therefor.

Then afterwards, to wit, on said twenty-fifth day of January, of the term and year last aforesaid, came said plaintiff, by his attorneys, and filed in said clerk's office his bill of exceptions herein, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit of the United States, southern district of Illinois. January term, A. D. 1873.

LAWRENCE LANGDEAU
v. } Bill of exceptions.
AMASA HANES.

Be it remembered that this cause came on to be heard before the Hon.
Thomas Drummond, presiding judge, and the Hon. Samuel
14 H. Treat, at the January term, 1873, of said circuit court, and that plaintiff and defendant, by written stipulation, waived a trial

by jury and submitted the case to the court upon proof and argument on the 22d and 23d days of January, 1873. Whereupon the plaintiff, to maintain the issue upon his part, read in evidence a patent, dated July 2, 1872, from the United States, for the land described in plaintiff's declaration, to the heirs of Jean Bapstite Tongas, which patent is in the words and figures following, to wit:

Patent to heirs of Tongas.

The United States of America to all to whom these presents shall come, greeting:

Know ye that there has been deposited in the General Land-Office of the United States a certificate, numbered seventy-five of the register of the land-office at Indianapolis, Indiana, whereby it appears that the claim of the heirs of Jean Baptiste Tongas, entered in the report dated March 25, 1806, of the commissioners appointed under the act of Congress approved March 26, 1804, entitled "An act making pro-
15 vision for the disposal of the public lands in the Indiana Territory, and for other purposes," and also entered in the report, (supplemental to "Document D,") dated November, 27, 1806, of the said commissioner, under the said act of March 26, 1804, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," has been confirmed by the first section of an act of Congress approved on the 3d day of March, 1807, entitled "An act confirming claims to land in the district of Vincennes, and for other purposes," said claim being an ancient grant to a lot or tract of land containing two hundred and four acres, and designated on the official plats of the General Land-Office as survey number three, in township three north, of range ten west of the second principal meridian, in the State of Illinois, and in the former Vincennes land-district.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the acts of Congress aforesaid, have given and granted, and by these presents do give and grant unto the said heirs of Jean Baptiste Tongas, and to their heirs, the tract of
16 land above described, to have and to hold the said tract, with the appurtenances, unto the said heirs of Jean Baptiste Tongas, and to heirs and assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed. Given under my hand at the city of Washington, this second day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

By the President:

[SEAL.]

U. S. GRANT,
By J. PARRISH, *Secretary.*
C. B. BOYNTON,
Recorder of the General Land-Office.

Rec., vol. 13, p. 452.

STATE OF ILLINOIS,
Lawrence County, ss:

This instrument was filed for record on the fifteenth day of November, A. D. 1872, and duly recorded in book "X," on page 312.

A. J. JUDY,
Clk and ex-officio Recorder.

17 Plaintiff then read in evidence the report of the commissioners of the Vincennes land-district appointed under the act of Congress approved the 26th of March, 1804, entitled "An act making provisions for the disposal of the public lands in the Indiana Territory, and for other purposes," an abstract of which report is in the words and figures following, to wit:

Supplement to Document D.

"List of lands confirmed by the commissioners in virtue of French or British grants, and of court and commandant deeds," which is supplemental to the report of the commissioners of the Vincennes land-district, of date March 25, 1806. See American State Papers, Public Lands, vol. 1, page 523, Duff Green's edition.

Abstract of commissioners report,

EXTRACT.

Original claimants.	Quantity confirmed.	Present grantee.	Appropriated or not.	Situation.
Tongas, Jean Baptiste.	204	Jean Baptiste Tongas, heirs of.	Not appropriated..	On the northwest side of Wabash, opposite Vincennes.

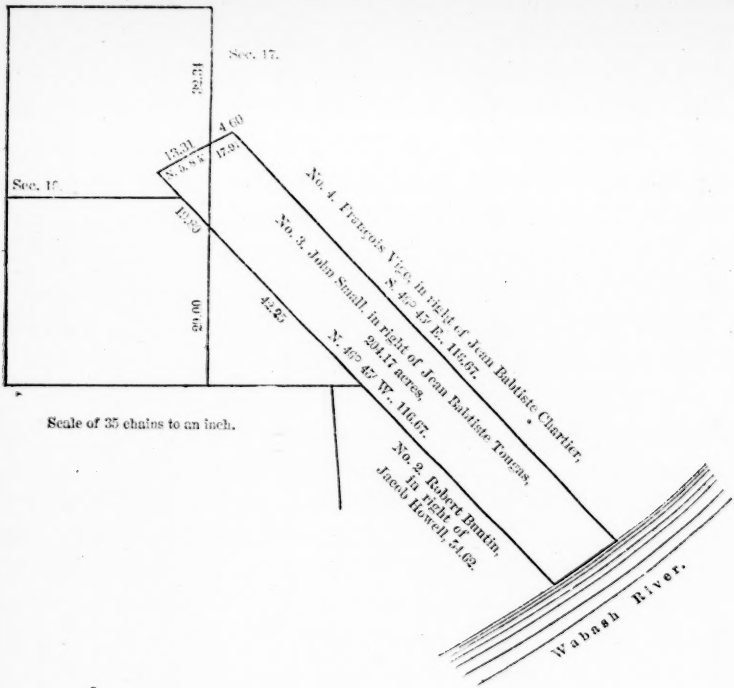
Plaintiff next read in evidence an act of Congress approved on the 3d day of March, A. D. 1807, entitled "An act confirming claims to
18 land in the district of Vincennes, and for other purposes." Plaintiff next proved that the land in controversy was surveyed under the authority of the United States in 1820, and read in evidence a certified copy of the United States field-notes, plat, and survey of the land in question, which is in the words and figures following, to wit:

United States field-notes.

STATE OF ILLINOIS, OFFICE OF CUSTODIAN OF
FIELD-NOTES, PLATS, ETC., OF
THE U. S. SURVEYS,
Springfield, January 21st, 187?

No. 3.

Plat and description of a tract of land of 204.17 acres, situate in township 3, north of the base line, range 10 west of the 2nd principal meridian, in the State of Illinois, executed by Robert Buntin, deputy surveyor. This tract was claimed by John Small in right of Jean Baptiste Tongas; the claim was affirmed by the board of commissioners, under the act of Congress of the 26th of March, 1804, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," and confirmed by the act of Congress of 3rd of March, 1807, entitled "An act confirming claims to land
19 in the district of Vincennes, and for other purposes." See American State Papers, vol. 1, page 523, Duff Green's edition, 1834, T. 3 N., R. 10 W. of the 2nd P. M.



DESCRIPTION.

Beginning at a stone on the right bank of Wabash River, the south corner of a tract No. 4., in the name of Francois Vigo, in right of Jean Baptiste Chartier, and the east corner of this survey. Thence down and along the right bank of the Wabash River, S. 58° W., 17.91 chains to a plum-bush 6 inches in dia., the southeast corner of a tract No. 2, in the name of Robert Buntin, in right of Jacob Howell, and the south corner of this survey. Thence N. 46° 45′ west, at 54.62 chains, a post at the intersection with the line between sect's 17 & 20, in township 3 north, range 10 west, corner, to the Robert Buntin survey, from which a hickory 6 inches in dia. bears N. 8°, E. 7 links distant, and an ash 5 inches in dia. bears S. 20° W., 12 links distant, at 96.87 chains a post in prairie at the intersection with the line between sections 17 & 18, from which the corner to sections 17, 18, 19, & 20, bears south 29.00 chains distant, and at 116.67 chains a post, the west corner of this survey and a corner to fractional section 18, from which a black-oak 10 inches in dia., bears N. 34°, E. 38 links distant; thence N. 58° E., at 13.31 chains a post at the intersection with the line between sections 17 & 18, from which a black-jack

4 inches in dia. bears S., 80° E., 573 links distant, and the corner to sections 7, 8, 17, & 18, bears north 32.34 chains distant, and at 17.91 chains, a post the west corner of the Francois Vigo tract, the north corner of this survey, and a corner to fractional section 17; thence S. 46° 45′ E., with the S. W. boundary of the Francois Vigo tract 116.67 chains to the beginning corner; surveyed by Robert Buntin in July, 1820.

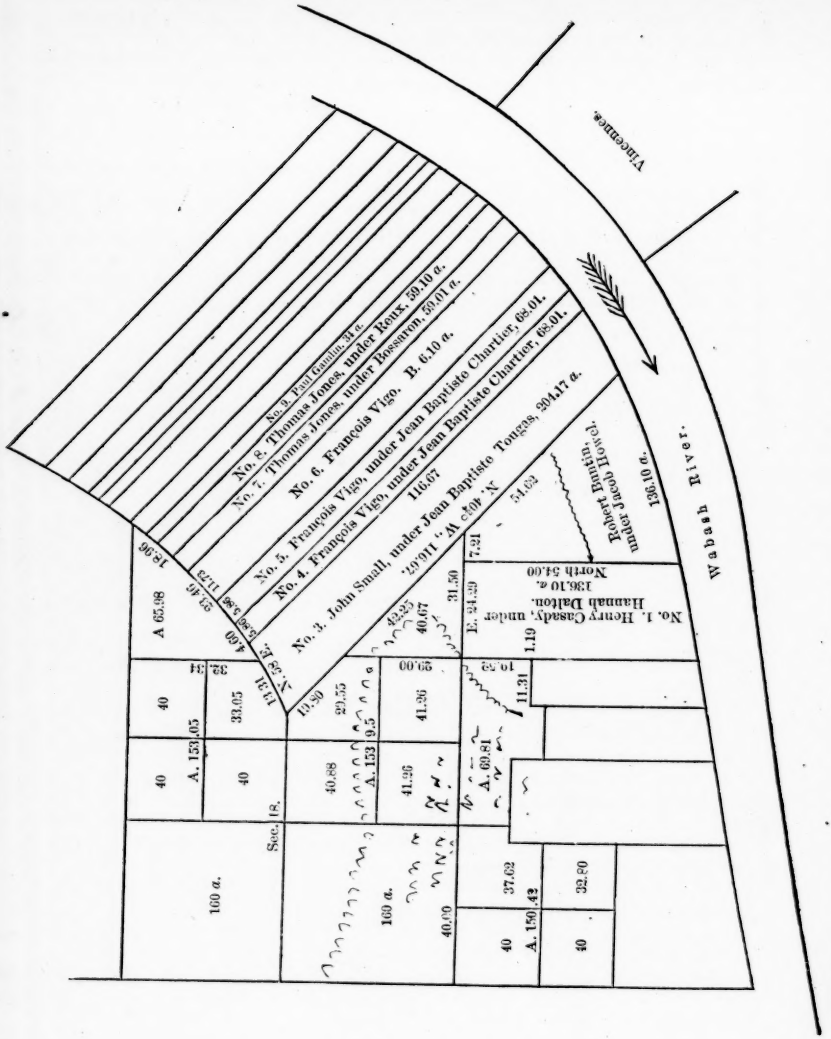
I certify that this is a true copy of the original field-notes of
21 Robert Buntin, of lot No. 3 in T. 3 N., R. 10 W. 2nd P. M., on file in this office.

W. W. H. LAWTON,
Custodian U. S. Surveys.

Plaintiff next produced and read in evidence a certified copy of part of the plat of township No. 3 north, of range 10 west of the second principal meridan, in the State of Illinois, from the Commissioner of the General Land-Office, including the land in question, which plat and certificate is in the words and figures following:

Copy of plat.

Part of T. 3. north, range 10 west of the 2nd principal meridan, Illinois.


Vincennes
Wabash River.
No. 9. Paul Gaulin, 91 a.
No. 8. Thomas Jones, under Roux, 59.10 a.
No. 7. Thomas Jones, under Bossirom, 59.01 a.
No. 6. François Vigo. B. 6.10 a.
No. 5. François Vigo, under Jean Baptiste Chartier, 68.01.
No. 4. François Vigo, under Jean Baptiste Chartier, 68.01.
No. 3. John Small, under Jean Baptiste Tougas, 204.17 a.
N. 40° W., 116.67
No. 1. Henry Casady, under Hannah Dalton. 136.10 a. North 34.00
Robert Pantier.
James Jacobs.
136.10 a.
54.63
E. 34.39
31.50
7.21
1.19
10.32
11.31
A 65.98
18.96
97.46
11.78
5.38
4.00
N. 38 E.
42.25
40.67
10.90
29.55
9.5
39.00
41.36
A. 153
40
40
A. 153.05
33
31.05
11.31
A. 69.81
160 a.
Sec. 18.
160 a.
40.90
37.62
32.80
40
A. 150.43
40

22 DEPARTMENT OF THE INTERIOR,
GEN'L LAND OFFICE,
March 9th, 1872.

I hereby certify that the above diagram is a correct copy of part of the plat of township No. 3 north, range No. 10 west of the 2nd principal meridian, in the State of Illinois, on file in this office.

WILLIS DRUMMOND,
Commissioner.

Plaintiff next read in evidence the depositions of Mrs. Bridget L. Cahel and E. A. Owens, tending to prove that Theotiste Langdlau, the mother of the plaintiff was the sole surviving heir of Jean Baptiste Tongas, the original claimant to the land in controversy, which fact, under the view which the court took of the law of the case, the court assumed to be established for the purpose of this trial; hence the deposition' not being material to the issue of law presented in this record are not inserted. Plaintiff next read in evidence an original deed from the said Theotiste Langdeau to Lawrence Langdeau, dated and properly acknowledged and certified on the 20th day of March, A. D. 1871, conveying
23 to the plaintiff all of her title and interest in the land in question; it was then admitted and proved that defendant was in possession as tenant under John Law, the landlord at the time process was served on him in this cause, and that the land described in plaintiff's declaration is worth six thousand dollars. This was all the evidence introduced by plaintiff on the trial in support of his cause of action.

The defendant then introduced and read in evidence, to maintain the issue on his part, a title-bond executed by John Small, in Oct., 1816, obligating and binding himself to convey the lands described in plaintiff's declaration to John D. Hay within one year after date in fee-simple, and it is not herein inserted because not material to the issue presented in this record.

Defendant next read in evidence a certified transcript of a judicial proceeding on the chancery side of the Lawrence County, Illinois, circuit court, instituted and commenced in July, 1834, by Enoch Allen, as administrator of the estate of Thomas Williams, deceased, to fore-
24 close a mortgage on the land in question, executed by John D. Hay on the 7th day of June, 1823, which cause was regularly prosecuted, and a decree to sell the land in question was regularly obtained, and one J. M. McLean was by decree of court in the said cause duly appointed commissioner to sell the land in question, in pursuance of which the said J. M. McLean as commissioner did, on the 4th day of October, 1835, sell the land in question to John Law, defendant's landlord, and made and executed to said Law a regular deed for the land in question, which record and deed were admitted by plaintiff for the purpose of the present trial, and the same are not incorporated herein because not material to the issue presented in this record.

Defendant next introduced and read in evidence two quit-claim deeds from the heirs of John Small to John Law, the defendant's landlord, conveying to him their interest in the land in question; one of these deeds was executed in 1836, and one in 1839. These deeds were admitted
25 by the plaintiff for the purposes of this trial, and not herein inserted, because immaterial to the issue presented in this record.

Defendant next read the depositions of numerous witnesses proving possession by said John Law of the land in question for more than ten consecutive years by tenant, and the payment during that time of all taxes legally assessed upon said land; but the said depositions are not

herein inserted, because the facts are admitted by plaintiff for the purpose of this trial. It was also for the purposes of this trial admitted by plaintiff that John Law, or Judge Law, as he is more frequently called, was in actual possession of the land described in plaintiff's declaration, under claim and color of title made in good faith, and that he had paid all the taxes legally assessed on the said land from 1836 up to the trial of this cause, that is, for more than thirty years. This was all the evidence introduced by defendant, and all the evidence introduced by either of the parties.

Whereupon plaintiff asked the court to declare that the plaintiff had the superior legal title to the land in question from the United
26 States; that the confirmatory act of Congress approved on the 3d of March, 1807, entitled "An act confirming claims to land in the district of Vincennes and for other purposes," only confirmed upon the confirmee the equitable title to the land in question; that the legal title to the land in question remained in the United States until the issue of their patent for the land in question, and that the statutes of limitation prescribed by the State of Illinois is no defence to plaintiff's action. But the court refused so to construe the said act of Congress or to hold that the limitation laws of the State of Illinois did not bar plaintiff's action. Whereupon plaintiff then and there excepted to the ruling of the court.

The court held, as matter of law, under the foregoing facts:

1st. That the act of confirmation of 1807 was a present grant, becoming so far operative and complete, to convey the legal title when the land was located and surveyed by the United States in 1820, as that an action of ejectment could be maintained on the same.

27 2d. That the patent was not of itself the grant of the land by the United States, but only the evidence that a grant had been made to the heirs of Jean Baptiste Tongas.

3d. That as Law went into the possession of the land under claim & color of title made in good faith, & had held possession for more than seven successive years, and during that time had paid all the taxes legally assessed upon the land before the commencement of this suit, it was a bar to a recovery by the plaintiff. To each and all of which propositions of law the plaintiff then and there excepted. There was no question of disability in the case. The plaintiff made a motion for new trial after the finding by the court on the issue.

Motion for new trial.

In the circuit court of the United States for the southern district of Illinois.

LAWRENCE LANGDEAU } January term, 1873.
vs.
AMASA HANES. }

28 Now comes the plaintiff, Lawrence Langdeau, by his attorneys, and moves the court for a new trial, and for cause says that the court erred in holding that the confirmatory act of Congress approved March the 3d, 1807, (2 vol. United States Statutes at Large, p. 144,) confirming the report of the commissioner of the Vincennes land-district propia vigore, passed the legal title to the confirmee in that class of cases which had not been surveyed at the date of the passage of the said act.

2d. Because the court erred in holding that the statute of limitations of the State of Illinois operates as a bar to plaintiff's action.

3d. Because the court erred in holding that the several conveyances of the land in question to Judge Law, defendant's landlord, contain sufficient descriptive words to pass the title, or to identify the land in question.

JOHN HALLUM,
MATHER & SCHOLES,
Att'ys for Pl'ff.

Which the court overruled; to which decision of the court in
29 overruling the said motion, the plaintiff then and there excepted.

Exceptions allowed.

THOMAS DRUMMOND.

(Indorsed:) Filed Jan'y 25th, A. D. 1873. J. A. Jones, cl'k.

Then afterwards, to wit, on the eighth day of February, of the year last aforesaid, came said plaintiff, and filed in said clerk's office his bond herein; which said bond is in the words and figures following, to wit:

Bond.

Supreme Court of the United States.

LAWRENCE LANGDEAU
v.
AMASA HANES. } In ejectment.

Know all men by these presents that we, Lawrence Langdeau, as principal, and S. D. Scholes, as surety, are held and firmly bound unto Amasa Hanes in the sum of five hundred dollars, to be paid to the said Amasa Hanes, his executors, or administrators. To which pay-
30 ment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 5th day of February, A. D. 1873.

Whereas the above-named Lawrence Langdeau hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the circuit court of the United for the southern district of Illinois: Now, therefore, the condition of this obligation is such, that if the above-named Lawrence Langdeau shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

LAWRENCE LANGDEAU. [SEAL.]
SAM'L D. SCHOLES. [SEAL.]

Sealed and delivered in presence of—
JOHN HALLUM.

Approved:

S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed February 8, 1873. J. A. Jones, clerk.

31 Whereupon, on said eighth day of February, of the year last aforesaid, a writ of error was issued in said cause in the words and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment in a plea which is in the said circuit court before you, or some of you, between Lawrence Langdeau, plaintiff, and Amasa Hanes, defendant, a manifest error hath happened, to the great damage of the said Lawrence Langdeau, as by his complaint appears: We, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your
32 seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this eighth day of February, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

[SEAL.] J. A. JONES,
Clerk of the Circuit Court of the U. S. for the Southern District of Illinois.

33 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To AMASA HANES, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Lawrence Langdeau is plaintiff, and you are defendant, in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this eighth day of February, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh year.

S. H. TREAT,
District Judge.

I hereby accept service of the above citation this 25th day of March, A. D. 1873.

AZRA DYER,
Attorney for Defendant in Error.

34 *Certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States in and for the said southern district of Illinois, do hereby certify the foregoing thirty-three pages to contain a true and complete copy of all the papers filed, proceedings thereon had, and process issued in a certain cause wherein Lawrence Langdeau is plaintiff, and Amasa Hanes is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 420. Lawrence Langdeau, plaintiff in error, vs. Amasa Hanes. S. Illinois C. C. U. S. Filed 2d April, 1873.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

LAWRENCE LANGDEAU,
vs.
AMASA HANES.
} EJECTMENT.

No. ~~689.~~ 420

BRIEF AND ARGUMENT OF

JOHN HALLUM,

Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

LAWRENCE LANGDEAU,
vs.
AMASA HANES. } EJECTMENT.

No. 662.

On Writ of Error to the Circuit Court of the United States for the Southern District of Illinois.

BRIEF AND ARGUMENT OF

JOHN HALLUM,

Attorney for Plaintiff in Error.

STATEMENT OF THE CASE.

This is an action of ejectment brought to recover 204 acres of land in Lawrence county, Illinois, which the defendant in error holds as tenant of one John Law.

Plaintiff in error claims title to the land in question,—

1st. Under the report of the Commissioners for the district of Vincennes, made on the 27th of November, 1806, as follows, to-wit:—

[EXTRACT.]

ORIGINAL CLAIMANTS	QUANTITY CONFIRMED.	PRESENT CLAIMANTS.	APPROPRIATED OR NOT.	SITUATION
Tougas, Jean Baptiste.	204	Jean Baptiste Tougas, heirs of	Not Appropriated.	On the Northwest side of the Wabash, opposite Vincennes.

[See American State Papers, vol. 1, 253.]

2d. Under an Act entitled "An Act, confirming claims to land in the District of Vincennes, and for other purposes," approved March 3d, 1807. (Stat. at Large, vol. 2, 446.) The first, fourth and fifth sections of said Act are as follows:

"Sec. 1. That all the decisions made by the commissioners appointed for the purpose of examining claims of persons claiming lands in the District of Vincennes, in favor of such claimants as entered in the transcript of decisions which have been transmitted by the said commissioners to the Secretary of the Treasury, according to law, be, and the same are, hereby confirmed."

"Sec. 4. That the several persons whose claims are confirmed by this Act, and have not been actually located prior to the establishment of the board of commissioners, be, and they are hereby authorized to enter their locations with the register of the land office of Vincennes, on any part of the tracts set aside for that purpose, by virtue of the Act, entitled "An Act respecting the claims to lands in the Indiana Territory, and State of Ohio," and, in conformity with the provisions of that Act: *Provided*, That such location shall be made prior to the first day of July, 1808, and the right of any person who shall neglect to locate prior to that day, shall become void, and forever barred."

"Sec. 5. That every person, or the legal representative of every person, whose claim to a tract of land is confirmed by this Act, and who had not previously obtained a Patent for the same from the Governor, either of the territory northwest of the Ohio, or of the Indiana Territory, shall, *whenever his claim shall have been located and surveyed*, be entitled to receive from the register of the land office, at Vincennes, a certificate stating that the claimant is entitled to receive a Patent for such tract of land by virtue of this Act, for which certificate the register shall receive one dollar; and which certificate shall entitle the party to a patent for the said tract, which shall issue, in like manner as provided by law for the other lands of the United States."

[The sections of the Act omitted have no reference to plaintiff's claim.]

3d. By location and survey made of the land in question, July, 1820.

4th. By warranty deed from the sole surviving heir of Jean Baptiste Tougas to plaintiff, dated March, 1871.

5th. By a Patent to the land in question from the United States to the said confirmees, heirs of said Tougas, issued July 2d, 1872.

2.

Defendant in error, or his landlord, claims title to the land in question, as follows:

1st. By quit claim deed from the heirs of one John Small, executed in 1826.

2d. By deed made in 1835, under a decree of the Chancery Court of Lawrence county, Illinois, foreclosing a mortgage upon said land.

3d. By actual possession for more than seven years previous to the institution of this suit, under claim and color of title, and payment of taxes.

Defendant does not pretend to derive title from the United States, or from the original confirmees, their heirs or assigns.

A jury being waived, the Court tried the case and rendered judgment for the defendant.

The case is here upon writ of error.

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error, Lawrence Langdeau, and says that, in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error assigns the following, to-wit:

1. The Court erred in holding, as matter of law, under the foregoing facts, that the act of Congress, approved on the 3d of March, 1807, was a present grant, being so far operative and complete, as to convey the legal title when the land was located and surveyed in 1820.

2. The Court erred in holding that the patent was not of itself the grant of the land by the United States, but only the evidence that a grant had been made to the heirs of Jean Baptiste Tougas.

3. The Court erred in holding that the limitation laws of the State of Illinois operate as a bar to plaintiff's action.

4. The Court erred in refusing to declare the law as asked by plaintiff, to-wit: "That the plaintiff had the superior legal title to the land in question from the United States.

That the act of Congress, approved on the 3d of March, 1807, entitled an act confirming claims to lands in the District of Vincennes, and for other purposes, only conferred upon the confirmees the equitable title to the land in question.

That the legal title to the land in question remained in the United States until the issue of their patent for it.

That the statute of limitations, prescribed by the limitation laws of Illinois, do not bar plaintiff's action."

JOHN HALLUM,
Att'y for Plaintiff in Error.

In the Supreme Court of the United States,

OCTOBER TERM, 1873.

LAWRENCE LANGDEAU, Plaintiff in Error,
vs.
AMASA HANES, Defendant in Error.
} EJECTMENT.

No. 662.

On Writ of Error to the Circuit Court of the United States for the Southern District of Illinois.

Brief by JOHN HALLUM, of counsel for plaintiff in error.

The plaintiff in error derives his title to the demanded premises under an Act of Congress, approved March 3, 1807 (2 vol. Statutes at large, p. 446), and by virtue of a patent from the United States, issued on the 2d day of July, 1872, in pursuance of said act.

The defendant in error derives his title to the land in question under the limitation laws of the State of Illinois; that is, claim and color of title, actual possession and payment of all taxes legally assessed thereon for seven years.

The defendant does not pretend to derive title either from the United States or from the original confirmee, his heirs or assigns.

The only question presented in this record is whether the confirmatory act of March 3, 1807, passed the equitable title merely, or the fee to the confirmee.

Plaintiff in error insists that the Circuit Court erred in holding that it passed the fee.

The first, fourth and fifth sections of this act are the only parts of it which relate to the question of interpretation as presented by that class of claims referred to in the act to which this case belongs; we therefore copy these sections entire.

The act is entitled "An act confirming claims to lands in the district of Vincennes, and for other purposes."

Section 1st provides "That all the decisions made by the commissioners appointed for the purpose of examining the claims of persons claiming land in the district of Vincennes in favor of such claimants, as entered in the transcripts of decisions which have been transmitted by the said commissioners to the Secretary of the Treasury, according to law, be and the same are hereby confirmed."

Section four provides "That the several persons whose claims are confirmed by this act, and had not been actually located prior to the establishment of the Board of Commissioners, be, and they are hereby authorized to enter their locations with the Register of the Land Office of Vincennes, on any part of the tracts set aside for that purpose, by virtue of the act entitled 'An act respecting the claims to lands in the Indiana Territory and State of Ohio,' and in conformity with the provisions of that act: *Provided*, that such location shall be made prior to the first day of July, 1808; and the right of any person who shall neglect to locate prior to that day, shall become void, and forever barred."

Section five provides "That every person or the legal representative of every person whose claim to a tract of land is confirmed by this act, and who had not previously obtained a patent for the same from the Governor, either of the territory northwest of the Ohio, or of the Indiana territory, shall, whenever his claim shall have been located and surveyed, be entitled to receive from the Register of the Land Office at Vincennes, a certificate, stating that the claimant is entitled to receive a patent for such tract of land by virtue of this act; for which certificate the Register shall receive one dollar; and which certificate shall entitle the party to a patent for said tract, which shall issue in like manner as is provided by law for other lands of the United States."

It will be observed that this act refers to several distinct classes of claims.

The second section of this act confirms all grants of land made in the district of Vincennes by the Governors of the Northwest and Indiana Territories prior to the establishment of the Board of Commissioners. This class of claims is sub-divided into two classes, namely: those which had been located and surveyed prior to the establishment of the Board of Commissioners under the act of Congress, approved March 26, 1804 (2 vol. Statutes at large, p. 227), and those claims which had not been located and surveyed prior to the act of 1804.

But the case at bar does not fall within this class or either of its sub-divisions.

The third section of the act confirms certain claims to land in the "Upper Prairie," or tract known as "Continuation," but the case under consideration does not fall within this class.

The fourth and fifth sections provide for the location and survey of *all unlocated and unsurveyed claims confirmed by the act*, and provides for the issue of patents in all cases where they had not issued prior to the passage of the act.

The case at bar falls exclusively within the latter class, the land never having been surveyed and severed from the public domain until July, 1820, which fact is fully shown by the record.

Under this state of law and fact, it is difficult to conceive upon what principle or rule of construction it can be held that the confirmatory act passed the fee to a specific tract of land before it had been surveyed and severed from the public domain.

His Honor, Judge Drummond, experienced some difficulty in construing the act, and holding that it passed the fee.

We give the decision of the learned Judge and his associate, Judge Treat, in their own language, as it is incorporated in the bill of exceptions and embodied in the record.

"The plaintiff asked the Court to declare that he had the superior legal title to the land in question from the United States. That the confirmatory act of Congress, approved on the 3d of March, 1807, entitled an act confirming claims to lands in the district of Vincennes, and for other purposes, only confered upon the confirmee the equitable title to the land in question. That the legal title to the land in question remained in the United States until the issue of their patent for it, and that the statute of limitations prescribed by the State of Illinois is no defence to plaintiffs' action.

But the Court refused so to construe the said act of Congress, or to hold that the limitation laws of Illinois did not bar plaintiffs' action.

"The court held as matter of law under the foregoing facts:

1st. That the act of Congress of 1807, was a present grant, being so far operative and complete to convey the legal title when the land was located and surveyed by the United States in 1820, as that an action of ejectment could be maintained on the same.

2d. That the patent was not of itself the grant of the land by the United States, but only the evidence that a grant had been made to the heirs of Jean Baptiste Tougas.

3d. That as Law went into possession of the land under claim and color of title made in good faith, and had had possession for more than seven successive years, and during that time had paid all the taxes legally assessed upon the land before the commencement of this suit, it was a bar to a recovery by the plaintiff."

How can it be said that the fee passed, or that the act of 1807 "operated as a present grant" before the conditions precedent were complied with, which were required by that act to complete the title?

These conditions precedent were, by the terms of the act, to be performed by both the confirmee and the United States. The former was "to enter his location with the Register of the Land

Office at Vincennes, on any part of the tracts set aside for that purpose" by act of Congress. The land was then to be surveyed by the United States; after which, the Register of Vincennes was to issue "a certificate stating that the claimant is entitled to receive a patent for such tract of land by virtue of this act," which certificate entitled the party to a patent for such tract of land.

The Court decided, and in effect said, we admit that the act of 1807 did not pass the fee, because the land was not severed from the public domain; yet we hold that it operated as a present grant, and that after the survey in 1820, the title of the United States was so far divested as to let in the limitation laws of the State to work the destruction of plaintiff's title before the patent issued.

We contend that the State had no power to pass a limitation law operating to divest plaintiff of his right before the Government passed the title to him by patent.

But to return to the question of construction.

I have been unable to find any other decision of the Courts of the United States construing this act; but there are many analogous acts of Congress which have been construed by this Court, and when we turn to them we respectfully submit it will be found that the principle involved in this case has been long settled—that the language of the act admits of no doubtful construction.

We will now examine the two classes of confirmatory acts of Congress, which have been often construed by this Court. First, that class of acts which have been held to pass an equitable title only. Second, that class of acts which have been held to operate as legislative grants conveying the fee.

On the 3d of March, 1807, Congress passed an act confirming certain claims to land in the then territories of Orleans and Louisiana (see 2 vol. Statutes at large, p. 440), which is analogous to the Vincennes act in many respects, and the construction given this act by this Court will materially aid in the construction of the act now under review; and for this reason, we extract at length from the act.

The second section of the act provides "That any person or persons, or the legal representatives of any person or persons, who, on the 20th of December, 1803, had for ten consecutive years prior to that day been in possession of a tract of land not claimed by any other person, and not exceeding two thousand acres, and who were on that day resident in the territory of Orleans or Louisiana, and had still possession of such tract of land, *shall be confirmed in their titles to such tract of land: Provided*, that no claim to a lead mine or salt spring shall be confirmed by virtue of this section; and, provided also, that no more land shall be granted by virtue of this section than is actually claimed by the party, *nor more than is actually*

contained within the acknowledged and ascertained boundaries of the tract claimed."

This section of the act certainly contains much stronger terms of *present grant* than anything to be found in the Vincennes act.

The fourth section of the act confers summary powers upon the Commissioners then or thereafter to be appointed, to hear and determine the rights of all claimants to land in the said territories in a summary manner, according to the custom and usage of the county, "*which decisions, when in favor of the claimants, shall be final against the United States, any act of Congress to the contrary notwithstanding.*"

This section taken by itself, or in connection with the second section, contains strong terms of present grant. The claims favorably reported upon are made forever conclusive against the United States, and it would seem that no further act was required to be performed, either by the confirmee or the Government, to complete the title so reported on.

But the sixth section of the act very materially qualifies the interpretation which might otherwise be given to the second and fourth sections.

This section provides that the Commissioners shall transmit to the Secretary of the Treasury, or officer acting as Surveyor General, transcripts of the final decisions made in favor of claimants by virtue of this act, and that they shall deliver to the party a certificate stating the circumstances of the case, and that he is entitled to a patent for the tract of land therein designated; which certificate, when transmitted to the Secretary of the Treasury, together with a plat of the land therein designated, shall entitle the party to a patent.

The second section provides for a survey of the land, as the fifth section of the Vincennes act provides.

It is respectfully submitted that the language of the Orleans and Louisiana act is much stronger in support of the assumption that the confirmatory act *proprio vigore* passed the legal title, than that of the Vincennes act; and it would seem that a construction adverse to this assumption would be decisive of the point in controversy.

In the case of Burgess v. Gray, 16 Howard, p. 48, it was contended with much plausibility that the second and fourth sections of the act of 1807, *ipso facto* passed the legal title to all claims therein confirmed; but Chief Justice Taney, who delivered the opinion of the Court, said the whole act must be construed together; that it did not pass the legal title; that the patent was required to pass the title from the United States.

The same act of Congress was again under review by this Court in West v. Cochran, 17 Howard, 408, and the same interpretation was again adhered to.

The Vincennes act is wholly devoid of words of present grant. The language of the act excludes all doubt on the subject. The *quantity* of land to which the confirmee was entitled was all that was ascertained by the Commissioners, and this right to a *specific quantity* of the public domain was all that the act purports to *confirm*. The act fully provides for all the subsequent steps necessary to consummate the title after the location, "*on any of the tracts of land set apart by Congress for that purpose.*" No specific tract of land was confirmed, because at the date of the act it had not been located and surveyed out of that part of the public domain set apart by Congress for that purpose. Yet the Court below admitted in evidence conveyances of this tract of land made as early as 1816, four years before it was surveyed and allotted by the United States to the heirs of plaintiff's ancestor, thus recognizing conveyances of the public domain by naked intruders thereon.

We apprehend that the learned Court wholly misapprehended the force and effect of the confirmatory act as applied to the facts developed in this record, especially in holding that the act was a "*present grant*," *taking effect* in *futuro:* namely, after the location and survey in 1820.

The next act of Congress belonging to this class to which we invite the attention of the Court, is commonly known as the New Madrid act, approved on the 17th of February, 1815 (3 vol. Statutes at large, p. 211).

This act, Section 1st, provides "That any person or persons owning land in the county of New Madrid, in the Missouri territory, with the extent the county had on the 10th of November, 1812, and whose lands have been materially injured by earthquakes, shall be, and they are hereby authorized to locate the like quantity of land, on any of the public lands of the said territory, the sale of which is authorized by law." The first proviso limits the quantity to be located, and excludes the beneficiaries from locating lead mines and salt springs.

The second proviso is in the following words: "*And, provided also, that in every case when such location shall be made according to the provisions of this act, the title of the person or persons to the land injured as aforesaid, shall revert to and be absolutely vested in the United States.*"

The second section provides for and points out the necessary steps to be taken for the issue of a certificate of location by the Recorder of Land Titles, and directs a survey of the located land to be made and returned to the Recorder.

The third and last section of the act provides "That it shall be the duty of the Recorder of Land Titles to transmit a report of the claims allowed and the locations made under this act to the Commissioner of the General Land Office, and shall deliver to the party a certificate, stating the circumtsances of the case, and that he is entitled to a patent for the tract therein designated, which certificate shall entitle the party to a patent, to be issued in like manner as is provided by law for other public lands of the United States."

This act is closely analogous to the Vincennes act and the Orleans and Louisiana act, and it is respectfully submitted that the construction given it by this Court will materially aid in the construction of the act under consideration.

It has been frequently contended before this Court and the Courts of Missouri, that the first section of the New Madrid act passed the fee to the re-located land as soon as the location and survey was made and returned to the Recorder of Land Titles, because at that moment the title of the United States to the injured land became complete.

This argument proceeded upon the plausible assumption that Congress did not intend to vest the Government with the absolute title to the injured lands, without at the same time passing the fee to the land given in lieu thereof.

But it has been repeatedly held by this Court that the whole act must be looked to in construing it, and that the fee remains in the Government until it passes by patent.

In Bagnell vs. Broederick, 13 Peters, 436, it was held that after the location and return of the survey to the Recorder of Land Titles, the locator has nothing but an equity in the land until he gets his patent from the Government.

That Congress has the sole power to declare the dignity and effect of titles eminating from the United States; that the whole legislation of the Government in reference to the public lands, declares the patent to be the superior and conclusive evidence of title; that until the patent issues, the fee remains in the Government.

Held, also, in passing upon the question of construction and the effect of the patent, that the power of the States to pass laws operating upon the incipient or equitable title derived from the United States, is limited by the constitution, and that the States have no power to declare these equitable titles of equal dignity with a patent eminating from the Government.

This decision was made in passing upon the defence set up under a Statute of Missouri authorizing equitable defences to actions of ejectment founded on New Madrid locations. The Statute went so far as to permit defendants in these actions to show that the plaintiff, or those through whom he claimed, had no land to give

the Government in exchange for the New Madrid location—in other words, that the United States was either defrauded, or had given the certificate of location or patent, as the case might be, to one not entitled to it.

This was an attempt by the State to interfere with the primary disposal of the public lands by the Government, and for this reason the Statute was held void. The same question was again presented in Fenn vs. Home, 21 Howard, 481, where it was attempted to maintain ejectment on a New Madrid certificate of location before the patent issued passing the legal title, and this Court affirmed its former decisions.

The State of Illinois has not only attempted to interfere with the primary disposal of the public lands within her limits by passing limitation laws protecting the intruder; but, like her sister State, Missouri, she passed an act in effect declaring an equitable title founded on a registered certificate of the entry of public lands, of equal dignity with a legal title. But this Court in the case of Wilcox vs. Jackson, 13 Peters, 498, held that the State had no power to pass such laws.

In the case at bar it was insisted by counsel (and sustained by the Court) that the State of Illinois had the power to pass both limitation and tax laws working a forfeiture of the incipient title derived from the United States before the issue of their patent; that the payment of taxes, coupled with possession by defendant under claim and color of title for seven years, worked a forfeiture of plaintiff's title without any judicial condemnation and sale of the land for the non-payment of taxes.

The recent case of Gibson vs. Chouteau, 13 Wallace, 92, disposes, we think, of every point presented in this record. In that case this Court, reviewing and affirming its former decisions, held: That the power of Congress in the disposal of the public domain cannot be interfered with or its exercise embarrassed by any State legislation; that such hostile legislation cannot deprive the grantors of the United States of the possession and enjoyment of the property by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition from the United States.

Third. That the patent is the instrument which under the laws of Congress passes the title of the United States; that in the action of ejectment in the Federal Courts for lands derived from the United States, the patent, when regular on its face, is conclusive evidence of title in the patentee.

That in actions of ejectment in the State Courts, when the question presented is whether the plaintiff or defendant has the superior title from the United States, the patent is conclusive.

That the occupation of lands derived from the United States before the issue of their patent, for the period prescribed by the statute of limitations of a State for the commencement of actions for the recovery of real property, is not a bar to an action of ejectment for the recovery of such lands founded on the legal title subsequently conveyed by the patent.

That such occupation does not constitute a sufficient equity in favor of the occupant to control the legal title thus subsequently conveyed, whether asserted in a separate suit in a Federal Court, or set up as an equitable defence to an action of ejection in a State Court.

To return to the question of construction. On the 12th of April, 1814, 3 vol. statutes at large, p. 121, Congress confirmed certain claims to land in the state of Louisiana and territory of Missouri, and provided for surveys and the issue of patents as in the Vincennes Act. Many of these claims had been surveyed, and many of them remained unsurveyed when the act passed. In this and many other respects it is closely analogous to the act in question.

The first section confirms incomplete claims under French and Spanish grants, or concessions, warrants or orders of survey, granted previous to the 10th of March, 1804, to the inhabitants of the territories of Orleans and Missouri, but the confirmation was limited, by the act, to those claims which had been filed with the recorder of land titles according to law, and embraced in the report of the commissioners; from which report it should appear, that the claim is founded in a *special location*, located or surveyed prior to the 10th of March, 1804, by a surveyor duly authorized by the government making such grant.

The third section of the act, makes it the duty of the recorder to issue orders of survey, when surveys are required, and to give certificates of confirmation upon the return of the surveys, and to issue like certificates in cases where no surveys are required. These certificates of confirmation entitle the parties to patents, and it is made the duty of the commissioner of the General Land Office to issue patents, *if it shall appear to him that the certificates were fairly obtained.*

This act of confirmation came under review by the Supreme Court of Missouri in the case of Papin vs. Hines, 23 Mo., 274; and in that case it was contended, that the fee passed by the confirmatory force of the statute, in that class of cases where the survey

had been completed under authority of the government making the grant. That the provisions in the third section, requiring a patent to issue, after the performance of certain conditions imposed by the act, on the surveyor and recorder of land titles, only related to that class of cases required to be surveyed. But it was held, that a patent was required in all cases under the act to pass the title.

We are aware that this authority is only persuasive, coming from a state court, but the reasoning upon which it is based is its best commendation.

The assumption in the construction of the act of 1814, that no patent was required to pass the legal title in that class of cases which had already been surveyed was contended for with much greater plausibility than the position assumed by the court in deciding the case at bar. In Papin vs. Hines, it was conceded in the argument, that the confirmatory force of the statute, in so far as it passed the fee, was restricted to that class of cases which had been surveyed before the passage of the act.

The Orleans and Louisiana act of 1807; the Vincennes act of 1807, and the Missouri and Louisiana act of 1814, all confirmed claims which had been surveyed prior to the passage of the respective acts, and all confirmed claims which were to be surveyed under the direction and sanction of the government, after the passage of the respective acts, and all of them, as well as the New Madrid act, provided that patents should issue.

We will now examine that class of cases which have been held, under several acts of Congress, to be legislative grants, passing the fee without any patent.

The first act of this class, is the act of Congress approved 18th of June, 1812; 2 vol. State at large, p. 748.

This act, sec. one, provides "That the *rights, titles and claims*, to town or village lots, out lots, common field lots, and commons, in, adjoining and *belonging*" to the inhabitants of St. Louis and the other towns and villages named, which lots have been inhabited, cultivated or possessed prior to the 20th of Dec., 1803, *shall be and the same are hereby confirmed* to them: "Provided, That nothing herein contained shall be construed to affect the rights of any persons claiming the same lands, or any part thereof, whose claims have been confirmed by the Board of Commissioners." "And it shall be the duty of the principal deputy surveyor of said territory as soon as may be, to survey or cause to be surveyed and marked (where the same

has not already been done according to law) *the out boundary lines* of the said several towns or villages, so as to include the out lots, common field lots and commons, thereto respectively belonging.

The fourth section provides that patents may issue.

It has been repeatedly held that the confirmatory force of this act rests upon possession and cultivation prior to the 3d of Dec., 1803.

It is not a question under the act whether the claimant had a title, or concession from the Spanish government or not, or whether there was a survey under that government or not, if he had possession and had cultivated the land, that was enough, provided his claim did not conflict with a prior and better claim.

The act simply *relinquished* the title of the United States, and referred all questions of conflicting title to the courts. Strother vs. Lucas, 12 Peters, 410; Papin vs, Hines, 23 Mo., 276; Carondalet vs. St. Louis, 1 Black, 179. Nothing was reserved to the government but the right to establish the *out boundary lines* to separate private from public property.

Under this act, each claimant was left to establish before the courts, by parol testimony, the facts which brought him within its provisions.

The act of the 3d of March, 1823, 3 vol. statutes at large, p. 786, granting to the inhabitants of Peoria, Illinois, village and out lots, inhabited by them prior to the 1st of January, 1813, is closely analogous to the act of 1812.

This act provides, sec. 1, "That *there is hereby granted* to each of the French and Canadian inhabitants and other settlers in the village of Peoria, in the state of Illinois, whose claims are contained in a report made by the Register of the Land Office at Edwardsville, in pursuance of an act of Congress, approved on the 15th day of May, 1820, and who had settled a lot in the village aforesaid, previous to the 1st of January, 1813, and who had not heretofore received a confirmation of claims, or a donation of any tract of land or village lot from the United States; *the lot so settled upon and improved; Provided*, Nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever, as a pledge on the part of the United States, to make good any deficiency occasioned by any other interfering claim or claims."

The second section provides, "That it shall be the duty of the surveyor of the public lands of the United States for that district, to cause a survey to be made of the several lots, and to designate on a plot thereof, the lot confirmed and set apart to each claimant." This section also provides, that patents may issue to the confirmees.

In Ballance vs. Tesson, 12 Ill., 326, (an authority cited and relied upon by defendent in the court below) it was held, That this act *proprio vigore* passed the legal title without any reference to the important fact as to whether the lot was or was not surveyed by the United States, after the passage of the confirmatory act.

The act was also under review by this Court in Bryan vs. Forsyth, 19 Howard, 334, and this Court held, That the act conferred on the grantee an *incipient title,* That when the survey was made and approved by the government *designating the limits of the lot* the title then became capable of sustaining an action of ejectment, before the patent issued, *if prosecuted in the State Court* under the statute of Illinois authorizing actions of ejectment to be prosecuted upon *equitable titles*—and the suggestion is made, that ejectment might be sustained in the federal Court, but this is the mere dictum of the Court. The real point before the Court was as to which of two patents, for the same lot, conveyed the fee.

But for the purpose of this argument, it matters little whether the act of 1823, conveyed the equity or the fee. The language is in the broadest terms of present grant "*There is hereby granted.*" What is granted? a lot in the village of Peoria. What lot? the lot settled on by the claimant prior to the first day of January, 1813. What authority did the government reserve to itself? simply the right to establish the boundaries of the lot, and nothing more; all other questions that might spring from conflicting claims, were referred to the courts. The act at least belongs to the same class as that of 1812. All the title of the United States, was relinquished to the claimant under both acts.

The next act falling within the second class, is that of the 21st of February, 1823, 3 vol. Statutes at large, page 724, for the adjustment of land claims in the territory of Michigan.

The third section provides for the issue of patents in the mode pointed out by law, for claims regularly and favorably reported upon, and it provides, "That such persons are hereby confirmed in their claims, agreeably to any *survey heretofore made,* or the *lines and boundaries established by the claimants respectively. Provided, that such confirmation shall only amount to a relinquishment forever on the part of the United States.*

In the case of Gregnon vs. Astor, 2 How 319, this Court held that this act passed the title of the United States to the claimant.

Here the surveys had all been made and the boundaries established by the claimants, before the passage of the act, and the government expressly relinquished its title to the claimant, nothing more was required to be done. There is no analogy whatever between

this and the Vincennes act. Yet this case is frequently referred to, to sustain the wholly unfounded assumption, that all confirmatory acts of Congress pass the legal title.

In the celebrated case of Maguire vs. Tyler, 8 Wallace 650, this Court held that, "When the documentary evidence of title produced by a claimant of an incomplete title to land contains no sufficient boundary lines, marking a definite parcel of land, so as to sever it from the public domain, the concession in such case, creates no right of private property which can be asserted in a court of justice, without an antecedent survey and location. That while Congress may confirm such claims, without previously ascertaining the boundaries, they have not thought proper to do so, but have organized boards of commissioners to adjudicate such claims, and provided for surveys.

That when there is a specific tract of land confirmed according to ascertained boundaries, the legal effect of the confirmation, is to establish the right and to locate the claim. But it is otherwise when the claim has no certain limits, and the confirmation is on the condition that the land is to be surveyed.

For these reasons, we respectfully ask that the Judgment of the Circuit Court be reversed.

JOHN HALLUM.

St. Louis, Oct. 1873.

W. B. Thompson
Jno. A. Hinde

Supreme Court of the United States

October Term 1873.

LAWRENCE LANGDEAU, Plaintiff in Error,

vs.

AMASA HANES, Defendant in Error.

Writ of Error from Circuit Court of the United States, Southern District of Illinois.

No. 662.

Defendant's Brief.

Supreme Court of the United States

October Term 1873.

LAWRENCE LANGDEAU, Plaintiff in Error,

vs.

AMASA HANES, Defendant in Error.

Writ of Error from Circuit Court of the United States, Southern District of Illinois.

No. 662.

Defendant's Brief.

The tract of land sought to be recovered by Plaintiff in Error is one occupied and possessed by a French settler sometime prior to the occupation of the North-west Territory by Virginia. As long as the territory remained under the control of Virginia, all rights and titles of the set-

tlers, whether under French or British grants were undisturbed and respected although the territory thus held was acquired by conquest. When Virginia prepared to transfer the Great North-western territory to the United States, she expressly stipulated in the Articles of Cession, passed by the General Assembly of the Common wealth of Virginia, October 20, 1783, which articles and stipulations were agreed to and incorporated in the resolutions of Congress, passed March 1, 1784, accepting the conveyance of said terrritory; in which it was especially stated, "That the French and Canadian inhabitants and other settlers of the Kaskaskies, St. Vincents and the neighboring villages, who have proposed themselves citizens of Virginia, shall have their possessions and titles *confirmed* to them and be protected in the enjoyment of their rights and liberties."

In pursuance of and to carry out these stipulations, Congress, by Act of March 26, 1804, (Statutes at large, Vol. 2, p. 277) appointed Commissioners to hear and determine all claims for lands held by the settlers under French or British grants or other valid titles. After the report was made by the Commissioners, Congress by act of March 3, 1807, (Statutes at large, Vol. 2, p. 446) confirmed the same in all things. Among the tracts or parcels of land, in the neighborhood of "St. Vincent," or more properly Vincennes, that came up for confirmation before the Commissioners was the tract in controversy which was claimed by *Jean Baptiste Tougas*, and which was confirmed to the heirs of the said *Tougas*.—(American State Papers Vol. 1, p. 523, Supplement to Document D.)

Now we contend that the fee of the land in controversy never was in the United States.

Aside from any stipulations in the treaty or cession, the recognized and fundamental law of nations has been, and still is, that private property shall be respected, and all rights and titles shall not and cannot be interfered

with, and this is the rule governing nations, even when the territory has been acquired by conquest. The fact, that after examination the Commissioners confirmed the title to the tract in controversy to the heirs of *Tougas*, shows that either the heirs or their ancestors had acquired a good and sufficient title to the same, previous to the cession of the North-western territory by Virginia; and that the legal estate remained in the claimants in full force, subject only to certain rights the Government has in all lands. The act of confirmation was not a grant by the United States, because the title was never in them. The appointment of the Commissioners was for the purpose of segregating the private property of the settlers, as required in the act of cession, from the public domain, to determine what amount of land in the territory ceded by Virginia was reserved to the settlers, who were the claimants, how much they claimed, and where their claims were located. (Reichart vs. Philip, et al., 33 Illinois, p. 434.)

The United States, after acquiring sovereignty over the country ceded by Virginia, stood simply in the place of the former sovereigns, and independent of any articles of treaty; private rights of property was to be held sacred and inviolate. The cession of a territory passed the sovereignty solely, and long prior to the United States acquiring possession of the North-west territory, these lands claimed by the settlers had passed out of the former French government to private individuals, and no confirmation was, in fact, required to make their titles good and perfect. We insist therefore that the fee never was in the United States, but remained after the cession vested in the settlers who claimed their lands, and could show a sufficient title derived from former Governments, whether by French or British grants, court or commandant deeds, while under the sovereignity of former governments. The principal object Virginia had in having the stipulations as to the confirmation of

titles in the articles of cession was, to allay any fears on the part of the French, or Canadian settlers, that their possessions and titles might be interfered with.—(Doe. dem. Moore vs. Hill et al., Breese' Reports, N. Edition, p. 304.)

If we are correct in our conclusions, no act of Congress, confirmation, or patent was necessary to establish title to those lands owned and possessed by the settlers, previous to the cession. Whatever title or legal estate these private individuals had in the lands claimed by them, remained in them after the cession, affected in no way by the fact that they had passed from the sovereignty of one nation to that of another. The Plaintiff in Error insists that the fee never having passed out of the United States, no legislation by any State affects their rights, nor can any statute of limitations be set up against the title of the Government.

Even if this position assumed by the Plaintiff is correct, we have shown conclusively, we think, that the fee never having been in the United States, it does not apply to the case at bar.

Again, admitting the United States did have some rights in and to the land in controversy, we insist that whatever claim or interest there was in the United States passed out by the confirmatory act of March 3, 1807, sustaining and confirming the acts of the commissioners in all things, being a *present grant*, operative and effective, divesting the United States of any claim or interest in the land aforesaid. (Doe. ex dem. Moore vs. Hill, Breese Reports. N. Edition, p. 304.)

We deny that there were conditions precedent to be performed under the act appointing commissioners. It is true a survey was necessary, but for what purpose and what was the object of this provision? simply to sever the private lands from the public domain. It was a matter of public policy, not necessary to create or perfect the title, but to ascertain and determine what

amount of land, in the territory ceded by Virginia, was reserved by the act of cession, and who claimed it and how much was claimed. (Reichart vs. Philips, 33 Illinois, p. 434.)

In the case of Burgess vs Gray, 16 Howard, p. 48. relied upon by the Plaintiff in Error, the act of March 3, 1807, in regard to lands in the territories of Orleans and Louisiana is construed. This act is totally variant from the act of the same date as to lands in the district of Vincennes. In the first place the claim of the Plaintiff in Error, in the case referred to, was not based upon a concession and was never confirmed.

The different intents and purposes of the respective acts are shown by the style of the acts themselves, that in regard to the former, reading, "An act *respecting* claims to land in the territories of Orleans and Louisiana." The latter is "An Act *confirming* claims to land in the district of Vincennes and for other purposes." Section 8 of the Louisiana act directs the Commissioners to examine and report the claims "in three general classes" to the Secretary of the Treasury who shall report the same to "Congress for their final determination thereon; the claims under this act remaining in the same condition so far as title is concerned after the report of the Commissioners as before, and absolutely requiring further legislation of Congress before confirmation. The Vincennes act *ipso facto* passes the title of all lands confirmed by the Commissioners, not requiring as a condition precedent, that the same *shall be* surveyed and patent issued to perfect title. That an act of Congress conveying titles or confirming claims, is tantamount or even paramount to a patent, can scacely be called into question after the repeated decisions on that point.—[12 Illinois, Ballance vs. Turner, p. 326. 34 Illinois Dart vs. Hercules, p. 395. 2 Howard Grignon et al. vs. Astor et al., p. 319. 12 Peters, Strother vs. Lucas, p. 410.]

A confirmation by the United States as regards private property, operates simply as a quit-claim of all rights the United States might have in or to said property, neither enlarging or diminishing what the original grant gave. A patent is simply a ministerial act which must be performed according to law. (2 Howard Chambers vs. Stoddard, p. 284.)

A title to land becomes a legal title when confirmed by Congress. Such confirmation is higher evidence of title than patent, because it is a direct grant of any estate which may have been in the United States. (Grignon vs. Astor, 2 Howard, p. 319.)

It is also held in the same case that an act of Congress requiring patents to be issued to persons "whose claims are contained in the report, transmitted to the Secretary of the Treasury, and which have been favorably reported on by said Commissioners, and such persons are hereby confirmed in their claims agreeably to any surveys heretofore made or *the lines and boundaries established by the claimants respectively*" vested the legal estate presently in the confirmees. In Bryan vs. Forsyth, 19 Howard, p. 334, it is held that the act of 1807 is a present-grant, becoming so far operative and complete as to convey the legal title; so that when the land was located and surveyed by the United States in 1820, an action of ejectment could be maintained on the same in the courts of the United States, even before patent was issued.

This court held that the first section of the act of June 12, 1812, (2 Vol, Statutes at large, p. 748,) is a present operative grant of all the interest which the United States had in the lands named in the act (1 Black. p. 595, Glasgow et al. vs. Hortiz et. al.)

By comparing the first section of the act of March 3, 1807, with the act construed in the above case, it will be seen that they are precisely the same. The words and language used in the first section of both acts are "be and the same are hereby confirmed."

We will only refer to one more case cited by the Plaintiff in error, for the reason that it is upon that particular case he hopes to succeed, it being his main reliance in the case at bar. It is the case of Gibson vs. Chouteau, 13 Wallace, p. 92. In that case the land in dispute was a tract given to certain parties in lieu of land destroyed or damaged by an earthquake at New Madrid in the year 1812. The lands held by early inhabitants of New Madrid in that year were either totally destroyed, or materially injured by an earthquake. Congress by an act passed February 17, 1815, (3 Statutes at large, p. 211,) *out of lands belonging to the United States*, being a part of the public domain, donated tracts commensurate with the losses of the respective settlers thus injured; of course no one will deny but that the title or legal estate to the land thus donated in place of that destroyed was solely and absolutely in the United States, and from her alone could any title be derived. Among other conditions set forth in the act, was one that the land thus injured at New Madrid should pass to the United States as part consideration for the donation of much more valuable land, that then a patent should issue for certain locations selected by the sufferers from out of the body of the public domain—the title to which said tracts could alone emanate from the Government—a state of facts so utterly different from the case at bar, that there is not the slightest analogy between the two, either in law or fact.

In the case cited there is no doubt but that the superior title is in him holding the patent; the legal estate or title could only come from the United States and, as a general proposition, the government divests itself of title by patent unless it does so by resolve, which is not the case in the act of February 17, 1815, under which the title in Chouteau vs. Gibson emanated.

It is not a parallel case and does not apply to the case at bar.

Hanes relies on an uninterrupted possession of nearly half a century. It is no argument against his right that no paper title is offered in evidence from the claimant, Tougas. In those early times transfers of property, both personal and real were made by the simple settlers of Vincennes by parole more frequently than by any writing or record. Land now of considerable value was at that time hardly worth the fee of the notary for writing the deed which conveyed it, and therefore passed from hand to hand with about the same formality a horse, or a gun, or a lot of beaver skins was sold. Among themselves they gave one thing and took another, whether land or peltry on a fair exchange by a shake of the hand, nor did they ever imagine that a few acres of land lying waste would be worth any considerable sum of money, or that no evidence of its sale would be admissible on a question of whose it was, unless by deed, regularly signed, sealed and delivered. (12 Peters, Strother vs. Lucas, p. 447.) It is no wonder then that no record of sale of these almost worthless lands, and the evidence of transfer from the early French settlers to other parties, is wanting as in the case under consideration.

We cannot believe that titles to property, running as far back as this does, adverse to the claimant some sixty years, the present owner having been in undisturbed possession thirty-six years, during which time all taxes have been paid, will be overturned by the court.

We take it, we have established each of the two propositions.

First, that the legal title to the land in controversy was never in the United States, but remained in the claimant Jean Baptiste Tougas.

Secondly, whatever title or legal estate there was in the United States passed out of it by the confirmatory act of March 3, 1807, and in the language of Judges Drummond and Treat, "was a present grant, becoming so far operative and complete, to convey legal title when the land was located and surveyed by the United States in 1820, as that an action of ejectment could be maintained on the same."

We therefore respectfully ask this court to approve the decision of the Circuit Court below, and affirm its judgment.

W. E. NIBLACK,

For Defendant in Error.